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ABSTRACT

Given the content of the Reagan administration's New Federalism initiatives and their accompanying effects on Title IX of the 1972 Education Amendments, the logical means of effectively continuing educational equity appear to rest with the states. A dozen states have enacted laws similar to Title IX, and more states are considering enactment of such laws. This paper summarizes the findings of the Project on State Title IX Laws (University of Southern California, Institute for the Study of Women and Men, Los Angeles, California) that studied the adoption of state Title IX laws, as well as the implementation of state sex equity policies and programs in relationships to New Federalism. The paper addresses the following questions: (1) what kinds of sex equity laws exist at the state level; (2) how do states adopt and carry out sex equity laws?; (3) which factors determine the types of laws adopted by states?; (4) do state sex equity laws make a difference?; and (5) what is the prognosis on state sex equity action under the New Federalism? While the adoption and implementation of state Title IX laws may be the second wave for ensuring sex equity in education, the impact of these broad state laws will be limited unless there is also continued federal commitment in providing both statutory protection and financial assistance to states. (DJC)

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THE NEW FEDERALISM AND WOMEN'S EDUCATIONAL EQUITY

How the States Respond

Paper for presentation at the

Association of American Geographers 1988 Annual Meeting

Panel on the Reagan Legacy: Domestic Issues

Phoenix, Arizona

by

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Introduction

Forty years of federal growth in the scope and cost of domestic programs begun with the New Deal ended with the Reagan administration's New Federalism initiatives. The New Federalism was born out of the administration's ideology that less government is better government, that government should be closer to the people, and that the intergovernmental relations of recent times violated a constitutional separation of powers. The New Federalism has been achieved by enlisting lower level governments as partners to curtail public spending and by passing down federal policy authority.

The New Federalism has created some substantial changes in intergovernmental relations, and has rendered new responsibilities upon states in a number of domestic areas. The effect of the New Federalism on education is a case in point, resulting in federal budget cuts and block grants, administrative and regulatory reduction, and the new theme of educational reform by states. By 1984, the Education Commission of the States reported that more than 250 state task forces had sprung up to study every aspect of education.[1] Even the basic terms in education have altered to accommodate new themes. For example,"equity" has been replaced by "excellence," "needs and access" by "ability and standards," "regulations and enforcement" by "deregulation," and "federal interventions" by "state and local initiatives."[2]

Civil rights provisions in education have been limited under the New Federalism. For example, witness the case of Title IX of the 1972 Education Amendments which offers the broadest prohibition against sex discrimination in education under federal law. Under the New Federalism, the broad coverage of the law has been challenged by the Reagan Justice Department and enforcement has been weakened within the Department of Education's Office for Civil Rights. The interpretation of Title IX further narrowed in 1984 when the U.S. Supreme Court ruled in *Grove City College v. Bell* that the law was program specific – only those programs and activities receiving direct federal funds need to comply, not the entire institution. The scope of Title IX was severely limited until the passage of the Civil Rights Restoration Act in 1988 which reversed the decision. In addition, the categorical grant programs which support the implementation of Title IX – Women's Educational Equity Act (WEEA) and Title IV of the Civil Rights Act – have faced repeated reductions.

Given the context of the New Federalism and its accompanying effects, the logical means of effectively continuing educational equity appear to rest with the states. A dozen states have enacted laws similar to Title IX, and more states are considering the enactment of such laws. However, there has been little research on the process for developing such laws, their contents, or their outcomes. This paper summarizes the findings of the Project on State Title IX Laws,[3] which studied the adoption of state Title IX laws, as well as the implementation of state sex equity policies and programs in relationship to the New Federalism.

The Questions

- What kinds of sex equity laws exist at the state level?
- How do states adopt and carry out sex equity laws?
- Which factors determine the types of laws adopted by states?
- Do state sex equity laws make a difference?
- What is the prognosis on state sex equity action under the New Federalism?

The Answers

Laws Like Title IX are in One-Quarter of the States

There are 13 states with state Title IX laws, providing coverage in at least four areas delineated under the federal Title IX law (i.e., general provisions, admissions, treatment of students, employment, and enforcement). These states include Alaska, California, Florida, Illinois, Maine, Montana, Massachusetts, Nebraska, New Jersey, Oregon, Rhode Island, Washington, Wisconsin.

Another 18 states have enacted fragmented sex equity laws, covering three or fewer areas of coverage under the federal Title IX law: Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Iowa, Kansas, Maryland, Michigan, Minnesota, New Hampshire, New York, North Carolina, Pennsylvania, South Dakota, Vermont, Wyoming.

The remainder consists of 19 mostly southern states which have no laws specific to any aspect of sex equity in education: Alabama, Arkansas, Delaware, Georgia, Kentucky, Louisiana, Mississippi, Missouri, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, West Virginia. Figure 1 shows the map of the typology of state laws.

Thus, only one-quarter of the states currently provide comparable protection to that provided under the federal law, and few areas under state laws exceed Title IX coverage. A state with any type of sex equity law is twice as likely to have ratified the Equal Rights Amendment than one with no law.

Decentralized Approach to Carrying out Equity: State-by-State

Telephone survey data taken in 12 states with state Title IX laws[4] reveal that women's groups and committed individuals are most often the primary initiators of such legislation. The types of impetus for state Title IX legislation can be of two types of reasons. First, commitment by equity advocacy groups or by change agents within/outside of state agencies to advance state laws is an important source of initiative. Second, existing implementation of the federal Title IX law itself has influenced general acceptance of equity principles, and therefore any changes in federal enforcement which threaten

Figure 1. Map on the Typology of State Laws

the continuation of existing practices can serve as an impetus for initiating parallel state laws.

The most significant types of support for state Title IX legislation usually come from women's organizations, and state and local sex equity professionals, while minority/ethnic groups, labor groups and other types of organizations (i.e., disability groups, student organizations, law-related groups, athletic groups, schools and colleges) play a smaller role.

Opposition to state Title IX legislation usually comes from public school districts and professional school administrator groups who resist the burdens of new requirements. In some cases, public colleges, private colleges and athletic groups also oppose such legislation. Though religious right wing organizations and other conservative groups are frequently cited as opponents of sex equity legislation, the survey did not find such opposition in the 12 states studied. However, state Title IX legislation currently underway in New York state is opposed by religious right wing groups.[5]

The strength of organizational sponsors, advocacy activities, legislative authors, legislation packages, and the lack or weakness of opposition are some of the intrinsic factors affecting the adoption of laws. Good timing, states' general commitment to education and educational equity, changes in enforcement of the federal Title IX law, and the existence of other state laws prohibiting discrimination are some of the extrinsic factors affecting the adoption of laws.

Bureaucratic resistence, fiscal contraints, and conceptual problems on the legislation (e.g., false notions that law would require coeducational dressing rooms) are the most frequent types of obstacles to successful adoption. That poor advocacy or organization are seldom the obstacles is a credit to well-conceived legislative strategies developed by advocates, which usually feature a low-key and low-publicity approach to avoid controversy.

Once state Title IX laws are adopted, the states studied all disseminate at least once information regarding the existence and coverage of their laws. Most promulgate regulations within a year or two following the laws' adoption, and through the regulatory process the same proportion of states hold public hearings on the laws. It is common practice to appoint responsible individuals at state agencies to coordinate the implementation of the laws, to develop guidelines and materials on the laws, and to provide some type of technical assistance to schools and colleges. The vast majority of the states review or monitor compliance with the laws, require assurances of compliance or collection of data. It is not unusual for new requirements to be amended into laws or regulations, nor to issue administrative rulings in cases of violation. However, never has a single state provided state funds to schools or colleges for implementation, nor has one withdrawn state funds for non-compliance.

As to the administration of state Title IX activities in elementary and secondary education, nearly all state education agencies receive federal financial assistance under Title IV to implement federal and state sex equity mandates. Roughly half of the state education agencies also receive some state support for carrying out state Title IX activities. In the few states which extend protection to higher education, the source of support in the state higher education agencies is always from the state general fund. No private funds are ever received to carry out state Title IX activities. Due to the existence of federal funds for elementary/secondary education, the average size of sex equity staff in state education agencies is usually two full-time professionals, while the average size of sex equity staff in state higher education agencies is usually less than one full-time professional.

In terms of operations, the majority of state agencies carry out state Title IX activities with federal Title IX activities, presumably because they receive federal grants to carry out sex equity activities. Less than half of the state agencies also carry out state Title IX activities with other federal civil rights programs (i.e., Title VI, Section 504, etc.) Some state agencies administer their state Title IX laws with other state civil rights laws, and few administer their state laws with the federal Carl Perkins Vocational Education Act sex equity programs.

When implementation of state sex equity laws is less than satisfactory, it is possible to recruit the oversight power of the legislature in monitoring agency compliance. For example, at the request of the California Commission on the Status of Women, the California Senate Education Committee held a 1987 oversight hearing on footdragging

by state educational agencies in promulgating regulations for the state's Title IX law. The oversight hearing resulted in agency acquiescence as well as an amendment to the law closing any loopholes for inaction. Therefore, advocacy groups continue to be important players in monitoring implementation.

Broad Structural and Institutional Factors Dictate Shape of Laws

The theoretical model for studying the adoption of state laws was based on the notion that social phenomena are reproduced by the interaction of factors at the structural, institutional and individual levels.[6] Sixteen variables reflecting factors at these levels were examined using quantitative analysis[7] and qualitative analysis[8] methods. The results show that the different types of laws adopted by states can be explained by six factors: a state's economic health, social and political progressiveness regarding women, level of female poverty, strength of women's advocacy groups, and involvement of knowledegable and committed individuals.

The model provides a reasonable explanation for the phenomenon of adoption. Economic health as measured by personal income is an important measure of a state's economic well-being. As indicated by the data studied, personal income is highly correlated with a host of enabling variables, including public expenditures for education and proportion of college-educated population. A fiscally solvent state which is not burdened with a host of economic hardships has a greater capacity to address social issues.

Likewise, a state with a low level of women living under poverty, as measured by family demographics, is another measure of both economic and social well-being for a state and for its female population. It may also be assumed that more women in such a state are gainfully employed or economically self-sufficient, not mainly concerned with the the basic question of survival.

State membership in the American Association of University Women (AAUW) was used as a proxy for women's advocacy organizations, because few other women's groups have historical records on state-by-state membership. High levels of membership in AAUW and other women's organizations lead one to expect that there is a social core of women who probably work in professional fields, who are willing and able to pay dues to support advocacy for the advancement of women, who are aware of and perhaps active on women's issues within the state. The importance of women's organizations in the adoption of state sex equity laws is supported by the study's survey data which demonstrate the enormous initiative and support attributed to women's organizations.

Social and political progressiveness is reflected in the representative of women in state legislatures. A significant proportion of women in state legislatures would be a natural companion to memberships in women's groups, since these groups have actively supported the election of women to political offices in recent years. In response to such

input and support from women's groups, it would be reasonable for female legislators to exhibit their commitment by carrying bills or casting votes for women's issues.

Another measure of political progressiveness is state legislative houses of a Democratic majority. The political importance of having Democrats in lower state houses is also not surprising, since the majority of state legislatures is Democratic. Furthermore, the history of modern civil rights legislation reflects the heavy participation of Democratic politicians both at the federal and state levels. For example, the study's survey data show that the vast majority of state houses which enacted state Title IX laws was of a Democratic majority. However, the importance of bipartisan support cannot be discounted, and is further substantiated by the fact that two-thirds of the states which enacted state Title IX laws did so under Republican governors. The phenomenon is of particular significance in view of the fact that prior to the 1986 elections, only one-third of all state chief executives was in the Republican column.

As shown in Table 1, based solely on structural and institutional factors, only one- sixth of the states have a high probability of adopting state Title IX laws, but two-thirds have a high probability of adopting fragmented sex equity laws. These probabilities underestimate the actual status of laws already enacted, which suggest that individual level factors not in the adoption model may account for some of the discrepenacies. Case and survey analyses demonstrate that the efforts of internal and external change agents can surmount overwhelming odds against adoption posed by broad structural and institutional conditions.

State Sex Equity Laws have a Positive Effect on Women and Girls

Respondents' general opinion in the study's survey reveal that there have been perceived gains in female participation in a variety of areas over the years. Higher female participation in athletics and greater equity in access to courses and non-traditional majors are the two most frequently cited areas of perceived gains.

Even though the vast majority of the respondents consider their state Title IX laws to be stronger than the federal Title IX law, more than one-third still attribute the federal law to be the cause for gains in female participation. Less than one-third think that the cause for gains in female participation could not be separated between the effects of the federal and state Title IX laws. Approximately one-sixth attribute the gains to a variety of causes, such as federal and state laws, changing roles for women in society, and economic conditions dictating two-income households. Only one-seventh attribute the gains in female participation to state Title IX laws.

The perceived gains in female participation are supported by data.[9] In interscholastic athletics, female participation grew modestly from 32.6% in 1976 to 34.8% in 1983. In vocational education where female participation is limited, the rate rose from 9.8% in 1976 to a mere 12% in 1983. During the same time period, female college enrollment in non-traditional majors increased from 21.3% to 36.3% in architecture and environ-

Table 1. Rank of States by Probabilitry of Adoption

Rank	State	Actual Status	Probability TL2	Probability TL3
1	California	TL3	99.99%	99.87%
2	Washington	TL3	99.01%	85.72%
3	Oregon	TL3	97.82%	72.86%
4	New Jersey	TL3	97.68%	71.61%
5	Alaska	TL3	97.32%	68.44%
6	Wisconsin	TL3	95.67%	56.94%
7	Minnesota	TL2	94.70%	51.67%
8	Wyoming	TL2	93.54%	46.41%
9	Colorado	TL2	92.97%	44.18%
10	Illinois	TL3	91.85%	40.28%
11	Texas	TL1	91.55%	39.31%
12	Arizona	TL2	90.31%	35.79%
13	Vermont	TL2	87.40%	33.33%
14	Hawaii	TL2	87.40%	29.33%
15	Kansas	TL2	87.32%	29.17%
16	Iowa	TL2	86.91%	28.42%
17	Connecticut	TL2	86.17%	27.16%
18	Florida	TL3	83.60%	23.36%
19	Maryland	TL2	83.12%	22.76%
20	New Hampshire	TL2	81.54%	20.90%
21	New York	TL2	80.68%	19.99%
22	North Dakota	TL1	80.14%	19.45%
23	Massachusetts	TL3	80.00%	19.31%
24	Missouri	TL1	75.98%	15.91%
25	Pennsylvania	TL2	65.20%	10.08%
26	Oklahoma	TL1	63.10%	9.28%
27	Maine	TL3	63.10%	8.35%
28	Michigan	TL2	60.16%	8.29%
29	Rhode Island	TL3	54.31%	6.64%
30	Virginia	TL1	53.12%	6.35%
31	Ohio	TL1	52.17%	6.12%
32	Indiana	TL2	48.17%	5.27%
33	West Virginia	TL1	47.39%	5.11%
34	Montana*	TL2	46.09%	4.86%
35	Delaware	TL1	45.97%	4.84%
36	South Dakota	TL2	42.19%	4.18%
37	Nevada	TL1	37.68%	3.49%
38	North Carolina	TL2	25.63%	2.02%
39	Idaho	TL2	24.74%	1.93%
40	Arkansas	TL1	24.16%	1.87%
41	Kentucky	TL1	17.64%	1.27%
42	New Mexico	TL1	13.67%	.94%
43	Alabama	TL1	11.59%	.78%
44	Georgia	TL1	11.00%	.73%
45	Tennessee	TL1	8.45%	.55%
46	Louisiana	TL1	8.13%	.53%
47	Utah	TL1	7.81%	.50%
48	South Carolina	TL1	2.84%	.17%
49	Mississippi	TL1	2.30%	.14%

Predictions by calculation of the maximum likelihood estimation (MLE) statistic in the logit model of adoption. Coding of typology of laws (TL) reflects TL1 as no laws, TL2 as fragmented laws, and TL3 as state Title IX laws. * Montana had not adopted a state Title IX law by December of 1986, the cutoff period for the study. However, the state did adopt such a law by March of 1987. ** Nebraska could not be ranked because it has a non-partisan unicameral legislature. Democratic state legislators (DEM) is a variable in the logit model of adoption.

mental design; from 32% to a near parity of 45.2% in business and management; from 10.6% to 23.8% in dentistry; from 7.5% to a near doubling, but still small, proportion of 14% in engineering; from 24% to 38.1% in law; from 22.8% to 28.3% in medicine; from 21.5% to 26.8% in physical science; and from 28.6% to a near parity of 49.1% in veterinary medicine.

The types of laws states adopt have a strong connection with corresponding levels of female participation in education.[10] States with sex equity laws reveal higher female participation rates in education than those with no laws. In the aggregate, states with state Title IX laws rank the highest in female participation in 90% of the cases. States with fragmented laws rank second in female participation in 70% of the cases. States with no laws rank third in female participation in 80% of the cases. These findings suggest that state sex equity laws are advantageous in increasing female participation in education over time.

Prognosis: Emerging State Laws under New Federalism Cannot Replace Federal Standard

State response to the New Federalism has been positive in view of historical trends in the adoption of state Title IX laws. It is of interest to note that between 1971 to 1976 under the Nixon-Ford administrations, when the federal Title IX law was enacted and regulations were promulgated, five states adopted state Title IX laws, presumably due to the publicity and interest stirred by federal activities. Between 1977 and 1980 under the Carter administration, the period in which initial federal Title IX compliance activities were to be completed and records of such were to be kept on file, not one state adopted a state Title IX law. The lack of state intiatives during this period may be due to complacency by advocates, a sense that the federal law was sufficient, even with its limitations, as the primary means to combating sex discrimination in education. Between 1981 and 1987, the period of the New Federalism under Reagan, a record eight states adopted state Title IX laws. It is noteworthy that the majority of the states which adopted state Title IX laws did so under the New Federalism period. The implementation of the federal Title IX and changes in its enforcement were among the reasons respondents cited for adopting state laws during this period.

However, only one-quarter of the states have enacted state Title IX laws. More than one-third of the states have fragmented sex equity laws with less coverage than the federal law, and more than one-third still have no laws addressing sex discrimination in education.

In terms of the allocation of funds to support sex equity in education activities, states have not responded to reductions under the New Federalism. It is reasonable to assume that states with state Title IX laws are likely the most progressive in the area of sex equity in education. However, even in the most progressive states, survey data show that there has been diminished federal support for sex equity in education under the New Federalism, namely reductions under the Women's Educational Equity Act and Title IV of the Civil Rights Act. States have not replaced the federal funds reduced under the New Federalism, nor have they targeted federal funds out of state block grants to support sex equity in education programs. In terms of response to potential reductions under Gramm-Rudman-Hollings, survey data show that states are not anticipated to replace future federal cuts, and certainly there is no expectation for any private funds to support sex equity in education. As a result, both the numbers and types of sex equity programs in states have decreased and will probably continue to decrease.

In those states with state Title IX laws, survey data reveal that the *Grove City College v. Bell* decision mainly had a neutral effect, and a slight negative effect, on the implementation of state laws. Only because these states have enacted broad prohibitions against sex discrimination in education are they relatively immune to policy curtailment at the

federal level. However, in states with fewer protections, the negative effects of *Grove City College* can only be more pronounced.

While the New Federalism may have created some transference of federal responsibility for educational equity to the states, it has apparently not changed general opinion about the importance of a continued federal role in this area. Survey data reveal that there is broad acceptance of engaging states in educational equity policies, but only in concert with an equal share of responsibility by the federal government. Given the option of having sex equity in education as either the sole responsibility for the federal or state governments, the federal government was preferred three times more often due to its ability to set a clear standard for all states to follow. The general opinion of continued federal involvement is supported by survey data attributing Title IX as the cause of female gains in education, regardless of the strength and existence of state laws.

Policy Implications

The ideology of states' rights under the New Federalism, along with the still chilling effects of the now reversed *Grove City College* decision, have diminished the federal role in prohibiting sex discrimination in education under Title IX of the 1972 Education Amendments. Three options are available to states in view of this devolution of federal authority: (1) enacting state Title IX laws which parallel broad federal provisions; (2) relying on existing fragmented state laws with less broad provisions; or (3) abandoning all efforts to prohibit sex discrimination in education. Without attributing the degree of cause, data show that states with broad or even limited sex equity laws have effected higher female participation in education over time than states without such laws. Thus, states committed to sex equity in education would be well served by the adoption of state Title IX laws, whether or not such an action is a response to the New Federalism.

In considering the adoption model of this research, the states with the highest probability values which have not yet done so are the best candidates for adopting sex equity laws. Advocates of educational equity need to search for the following characteristics in potential Title IX states: high levels of personal income, high membership in women's organizations, low levels of female poverty, state legislatures where women are represented, state houses of a Democratic majority with the potential for bipartisan support, and the involvement of knowledgeable and committed advocates. As for the states with low probability values, the potential for enacting state laws will likely depend on favorable changes in long-term structural and institutional conditions, as well as the short-term ability of knowledgeable individuals to surmount the constraints.

Federal funds supporting educational equity programs have been curtailed under the New Federalism and will likely continue to diminish under Gramm-Rudman-Hollings deficit reductions. To date, states have not targeted funds to replace federal budget cuts. Even as federal support is shrinking, data show that state education agencies are still mainly depending on federal support to implement sex equity in education ac-

tivities. Since the New Federalism will not likely be reversed in the near future, it will be necessary for states to consider the allocation of funding for implementing sex equity in education. Without either federal or state support for implementation, state laws addressing sex discrimination in education are but paper tigers.

While the adoption and implementation of state Title IX laws may be the second wave for ensuring sex equity in education, the impact of these broad state laws will be limited unless there is also continued federal commitment in providing both statutory protection and financial assistance to states. State sex equity in education laws are merely an addition to existing federal provisions, not a replacement for them.

FOOTNOTES

[1]Task Force on Education for Economic Growth. *Action in the States: Progress toward Education Renewal.* Denver: Education Commission of the States, 1984, iv.

[2]Clark, D.L., & Astuto, T.A. The Significance and Permanence of Changes in Federal Education Policy. *Educational Researcher*, October 1986, 15(8), 4-13.

[3]The Project on State Title IX Laws directed by Phyllis Cheng was funded by a grant by the U.S. Department of Education, Women's Educational Equity Act. The final product of the Project on State Title IX Laws is *The Second Wave: The New Federalism and Women's Educational Equity*, a forthcoming book published by the Center for Women Policy Studies, Washington, D.C., 1988.

[4]The Project on State Title IX Laws administered a telephone survey in 1986 to ascertain the process of adoption and implementation of state Title IX laws. Included in the survey were 61 selected respondents in 12 states with state Title IX laws, including state Title IX coordinators, state vocational education sex equity coordinators, legislators responsible for state Title IX laws, and advocates involved in the legislative process.

[5]Phyllis Cheng's interviews with New York sex equity advocates in 1986 and with the Gazette Newspapers in 1987.

[6]Structuration theory as delineated by Anthony Giddens in *The Constitution of Society: Outline of the Theory of Structuration*. Berkeley and Los Angeles: University of California Press, 1984.

[7]A logit regression model was applied to test the effects of five independent variable on dependent variable typology of laws (1 = no laws, 2 = fragmented sex equity

laws, 3 = state Title IX laws). Dependent variables in equation are personal income, females as heads- of-households with children, membership in American Association of University Women, female legislators, Democrats in lower state house, and Democrats in upper state house. Entire model was significant at the .01 level, and all variables were significant at .1 level. For states with state Title IX laws, data was used from the year prior to adoption. For remaining states, 1984 data was used in the equation. Sources of data include annual reports of *Statistical Abstracts of the United States* from 1972 to 1986, Bureau of the Census, U.S. Department of Commerce, as well as the Center for Women in Politics, Rutgers University.

[8]Case and survey information were used to analyze individual factor affecting adoption.

[9]National Center for Educational Statistics and Office for Educational Research and Improvement, U.S. Department of Education.

[10]A two-way analysis of variance test was conducted to measure the relationship of state laws (no laws, fragmented laws, state Title IX laws) and time (1976, 1979, 1983) on female participation in nine areas of education. The typology of laws was found to have statistically significant main effects (.1 level) on female participation in athletics, vocational education, architecture and environmental design, dentistry, law, medicine, and veterinary medicine.